S.B. CRIMINAL MISC. IInd BAIL APPLICATION NO.2360/2006
(Paresh Vs. State)

Date of order : 6.7.2006

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sandeep Mehta, for the applicant.
Mr. L.R. Upadhyay, Public Prosecutor.

I have heard learned counsel for the applicant as well as learned Public Prosecutor for the State.

In the present case, first bail application moved on behalf of the applicant was rejected by this Court on 6.3.2006. Thereafter, after completion of investigation, challan has been filed on 20.4.2006. It is contended by the learned counsel for the applicant that a bare perusal of FIR, filed by the complainant herself, will go to show that the Police has registered the case against the applicant for offence under Sections 376, 406 and 420 I.P.C. but in the FIR, the complainant has nowhere alleged the commission of offence under Section 376 I.P.C. against the applicant. Moreover, it is alleged by complainant in the FIR that she got married with accused and the documents with regard to their marriage are lying with the applicant and he is not returning those documents and going to solemnize second marriage, therefore, he has cheated her. As per the contention of the

learned counsel for the applicant the allegation with regard to commission of offence under Section 376 I.P.C. was levelled by prosecutrix in the statement recorded under Section 164 Cr.P.C. in which a concocted story was framed by her and the applicant has been falsely implicated for offence under Section 376 I.P.C. Learned counsel for the applicant has also invited the attention of this Court towards the judgment reported in 2003 SCC (Cri.) 775 and prayed that as per the contents of FIR and the statement recorded under Section 164 Cr.P.C., no offence is made out against the applicant.

Learned Public Prosecutor opposed the bail and contended that prosecutrix was cheated by the applicant and while giving assurance of marriage, the applicant established physical relation with her. It is also contended by the learned Public Prosecutor that in the statement recorded under Section 164 Cr.P.C., allegations have been levelled against the applicant with regard to making physical relation forcibly with the prosecutrix. Therefore, at this stage, the applicant is not entitled to be released on bail.

I have perused the challan papers as well as the statement of prosecutrix recorded under Section 164 Cr.P.C. I am not inclined to grant bail to the applicant at this stage. Accordingly, the second bail

application stands rejected. However, the applicant is at liberty to move fresh bail application after recording of the statement of prosecutrix Mst. Seema. It is expected from the trial court that the statement of prosecutrix is recorded first.

(GOPAL KRISHAN VYAS), J.

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